

**ORIGINAL**

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

JUL 13 2001

In re: ) Chapter 11  
 )  
 W. R. GRACE & CO., et al.,<sup>1</sup> ) Case No. 01-1139 (JJF)  
 ) (Jointly Administered)  
 Debtors. )

**RESPONSE OF THE DEBTORS TO THE OBJECTIONS OF (i) THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS AND (ii) THE OFFICIAL COMMITTEE OF ASBESTOS PROPERTY DAMAGE CLAIMANTS TO THE MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING AND APPROVING AN OMNIBUS PROCEDURE FOR SETTLING CERTAIN CLAIMS AND CAUSES OF ACTION BROUGHT BY OR AGAINST THE DEBTORS IN A JUDICIAL, ADMINISTRATIVE, ARBITRAL OR OTHER ACTION OR PROCEEDING**

The above-captioned debtors and debtors in possession (collectively, the "Debtors"), by and through their undersigned counsel, hereby submit this response (the "Response") to the objections (each an "Objection" and collectively, the "Objections") of (i) the Official Committee of Asbestos Personal Injury Claimants and (ii) the Official Committee of

<sup>1</sup> The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co.-Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., G C Limited Partners I, Inc. (f/k/a Grace Cocoa Limited Partners I, Inc.), G C Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc., GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc.), Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (f/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc.), E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

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Asbestos Property Damage Claimants to the Motion (the "Motion") of the Debtors for Entry of an Order Authorizing and Approving an Omnibus Procedure for Settling Certain Claims and Causes of Action Brought By or Against the Debtors in a Judicial, Administrative, Arbitral or Other Action or Proceeding.<sup>2</sup> In support of this Response, the Debtors respectfully represent as follows:

### **Summary**

1. The Debtors assert that the implementation of the Omnibus Procedure (i) will streamline and reduce the cost of administration of the Debtors' estates, thereby creating value for creditors, (ii) is customary in bankruptcies the size of these Chapter 11 Cases, (iii) is designed to keep parties-in-interest sufficiently apprised and notified of settlements, and (iv) is in the best interests of the Debtors' estates and creditors.

### **Background**

2. The Debtors hold various claims and causes of action against numerous third parties. Similarly, third parties hold various claims and causes of action against one or more of the Debtors. To minimize expenses and maximize value for the creditors of the Debtors' estates, the Debtors filed the Motion on June 7, 2001, to obtain authority from the Court to resolve non-asbestos related De Minimis Claims pursuant to the Omnibus Procedure and in accordance with section 363(b) of the Bankruptcy Code and Fed. R. Bankr. P. 9019. Further, and as set forth in the Motion, in no event will a settlement pursuant to the Omnibus Procedure

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<sup>2</sup> Capitalized terms not defined herein shall have the same meaning ascribed to them in the Motion.

provide for any monetary payment to be made by the Debtors from property of their estates to or on behalf of third parties on account of any claims owing or arising prior to the Petition Date.

3. On June 18 and June 21, 2001, respectively, the Property Damage Committee and the Personal Injury Committee filed the Objections to the Motion.<sup>3</sup> For the reasons set forth herein, the Debtors request that the Court deny the Objections in their entirety and approve the Motion.

**The Types and Number of Claims Outstanding Against the Debtors' Estates Which Are Subject to the Omnibus Procedure**

4. The Debtors have agreed with the Committees not to settle any asbestos related claims pursuant to the Omnibus Procedure. Therefore, the types of claims which are eligible to be resolved pursuant to the Omnibus Procedure primarily include environmental, employee, landlord and tenant, income tax, intellectual property, acquisition and divestment, breach of contract, product liability and vendor and customer related claims.<sup>4</sup> Consistent with other debtors of similar size, the Debtors estimate that they may have thousands of claims to resolve during the pendency of the Chapter 11 Cases. For example, the Debtors have over 200 leases and subleases, over 6500 current employees, not to mention countless former employees, hundreds of claims relating to pending and threatened litigation, many customer and vendor claims relating to the Debtors' products and services, several pending environmental claims and many potential acquisition and divestment related claims. The Debtors currently estimate that approximately (i) 45 environmental claims, (ii) 20 income tax claims, (iii) 250 various litigation

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<sup>3</sup> The Debtors have resolved a third objection to the Motion, filed by certain related insurance companies on June 21, 2000.

<sup>4</sup> The Debtors do not disclose herein their estimation of the value of any settlements proposed to be resolved pursuant to the Omnibus Procedure for fear of influencing counterparties asserting claims against the Debtors' estates.

related claims, and (iv) each and every potential employee claim may be resolved through the use of the Omnibus Procedure. Therefore, in light of the significant volume of overall claims the Debtors will likely have to review and analyze before the completion of the Chapter 11 Cases, the approval of the Omnibus Procedure is appropriate if the Debtors are to facilitate an efficient resolution to the Chapter 11 Cases.

**The Implementation of the Omnibus Procedure  
Is In the Best Interests of the Debtors, Their Estates and Creditors**

5. In light of the significant number of parties involved in and the substantial size of the Chapter 11 Cases, the costs associated with preparing individual motions for each settlement with indifference to the amount of the claim being settled, and providing notice of the same to each interested party in the Chapter 11 Cases, would be astronomical and wasteful of the Debtors' and the Court's resources. Moreover, if the Debtors were required to file separate motions for each proposed settlement, the Court's docket could become cluttered with settlement pleadings. The efficient administration of the entire Chapter 11 Cases may then become subjected to the Court's availability and the time required for the Court to individually consider each such motion, thereby delaying not only the resolution of each De Minimus Claim, but the resolution of the Chapter 11 Cases as well. In light of such concerns, even the Asbestos Personal Injury Committee concedes in its Objection that an omnibus settlement procedure, in some form, is appropriate in the Chapter 11 Cases. Accordingly, the Omnibus Procedure is an effective, yet conscientious, means to streamline the administration of the Chapter 11 Cases.

6. Indeed, courts in this District have routinely approved procedures nearly identical to the Omnibus Procedure proposed by the Debtors. See, e.g., In re United Artists

Theatre Company, Case No. 00-3514 (SLR) (Bankr. D. Del. 2000) (debtors granted authority to settle claims (i) with a value under \$100,000 without notice only to certain parties-in-interest and (ii) with a value between \$100,000 and \$1,000,000 with notice only to parties-in-interest); and In re Trans World Airlines, Inc., Case No. 01-0056 (PJW) (Bankr. D. Del. 2001) (debtors granted authority to institute an omnibus procedure to settle claims); see also In re Consolidated Stainless, Inc., Case No. 97-2593 (JJF) (Bankr. D. Del. 1997); In re Montgomery Ward Holding Corp., Case No. 97-1409 (PJW) (Bankr. D. Del. 1997); In re Edison Brothers Stores, Inc., Case No. 95-1354 (PJW) (Bankr. D. Del. 1995); In re R.H. Macy & Co., Case No. 92 B 40477 (Bankr. S.D. N.Y. 1992); and In re The Circle K Corporation, Case No. 90-5052-PHX-GBN (Bankr. D. Az. 1990).

7. In addition, the procedures for resolving de minimis claims approved by the Court in the Harnischfeger bankruptcies are particularly relevant to these Chapter 11 Cases. In re Harnischfeger Industries, Inc., Case No. 99-2171 (PJW) (Bankr. D. Del. 1999). The Harnischfeger debtors were a group of global, strategically-integrated businesses involved, in part, in the design and manufacture of capital machinery, equipment and aftermarket parts with gross annual sales of approximately \$2 billion at the time of the filing of their bankruptcies. In recognition of the complexities created by the sheer size of the Harnischfeger entities, the Harnischfeger court granted the debtors the authority, in their discretion, to settle de minimis claims (i) with a value under \$100,000 without notice to parties-in-interest or any further action of the Court and (ii) with a value between \$100,000 and \$1,000,000 with notice only to the United States Trustee, the official committee of unsecured creditors and the postpetition lenders.

Id. Pursuant to such procedures, the Harnischfeger debtors resolved in excess of 10,000 claims during the pendency of their chapter 11 cases, many through the use of their settlement procedures. Considering the similarities in size and complexity between the Harnischfeger bankruptcies and the Chapter 11 Cases, as well as the success of the Harnischfeger settlement procedures, the Debtors assert that the Omnibus Procedure, substantially similar to the Harnischfeger procedure,<sup>5</sup> is appropriate in the Chapter 11 Cases.

8. Despite the fact that notice provisions similar to those proposed in the Omnibus Procedure have been determined by Courts in this District to adequately notify interested parties, the Property Damage Committee argues that applicable bankruptcy law requires that the Court affirmatively approve each and every proposed settlement. The Property Damage Committee is simply wrong. Specifically, the Bankruptcy Rules provide that “[a]fter a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.” Fed. R. Bankr. P. 9019(b). Moreover, courts applying Bankruptcy Rule 9019 have also found that it is appropriate in bankruptcy cases to establish procedures for the settlement of classes of claims. See e.g., In re Check Reporting Services, Inc., 137 B.R. 653, 656 (Bankr. W.D. M.I. 1992); see also In re Consolidated Stainless, Inc., Case No. 97-2593 (JJF) (Bankr. D. Del. 1997) (establishing procedures for the settlement of preference actions pursuant to Fed. R. Bankr. P. 9019). Accordingly, the establishment of the Omnibus

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<sup>5</sup> Indeed, the procedures approved in the Harnischfeger bankruptcies were more lenient than the procedures requested in the Motion. Specifically, parties-in-interest received only 10 days prior notice of settlements, as opposed to the 20 days prior notice the Debtors have agreed to provide in the Chapter 11 Cases.

Procedure to settle classes of claims as set forth in the Motion is expressly authorized by the Bankruptcy Rules and the applicable case law.

9. In light of the Trustee's appointment of the Committees, it is also appropriate in certain circumstances for the Court to limit notice to those bodies appointed to regulate the administration of a debtor's estate. The approval of the notice provisions set forth in the Omnibus Procedure is just such a circumstance. See e.g., In re The Drexel Burnham Lambert Group, Inc., et al., 130 B.R. 910, 926 (S.D. N.Y. 1991) (finding that Fed. R. Bankr. P. 9019 grants courts wide discretion as to which creditors are to receive notice and how). In response to the Objections, the Debtors have agreed to provide the Negative Notice Parties with twenty (20) days prior notice of any proposed settlement with a value between \$100,000 and \$1,000,000 in accordance with Fed. R. Bankr. P. 9019. The Omnibus Procedure also requires the Debtors to file a quarterly report listing each of the claims resolved with a value of less than \$100,000. Thus, if any of the Committees choose to allege that the Debtors are abusing the processes afforded them by the Omnibus Procedure, such Committee may file the appropriate papers with the Court to rectify the alleged abuse. In this fashion, parties-in-interest are notified, their creditor bodies are protected and the value of the Debtors' estates is preserved.

#### **Conclusion**

10. The Omnibus Procedure proposed by the Debtors is an efficient and competent means for streamlining the administration of the Chapter 11 Cases and ultimately reducing the costs of the Chapter 11 Cases to the Debtors' estates and creditors, while

appropriately protecting and preserving the interests of the Debtors, their estates and their creditors.


WHEREFORE, for the foregoing reasons, the Debtors respectfully request (i) that the Objections be denied in their entirety, (ii) the Court approve the Motion, and (iii) the Court grant such other relief as it deems just and proper.

Dated: July 13, 2001

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
W. R. GRACE & CO., <u>et al.</u> , <sup>1</sup>	)	Case No. 01-01139 (RJN)
	)	Jointly Administered
Debtors.	)	

**AFFIDAVIT OF SERVICE**

STATE OF DELAWARE	)
	)SS
COUNTY OF NEW CASTLE	)

Patricia E. Cuniff, being duly sworn according to law, deposes and says that she is employed by the law firm of Pachulski, Stang, Ziehl, Young & Jones P.C., co-counsel for the Debtors, in the above-captioned action, and that on the 13th day of July, 2001 she caused a copy of the following document(s) to be served upon the attached service list(s) in the manner indicated:

**1. Response of the Debtors to the Objections of (i) the Official Committee of Asbestos Personal Injury Claimants and (ii) the Official Committee of**

<sup>1</sup> The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co.-Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., G C Limited Partners I, Inc. (f/k/a Grace Cocoa Limited Partners I, Inc.), G C Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc., GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (f/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc., E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

**Asbestos Property Damage Claimants to the Motion of the Debtors for Entry of an Order Authorizing and Approving an Omnibus Procedure for Settling Certain Claims and Causes of Action Brought By or Against the Debtors in a Judicial, Administrative, Arbitral or Other Action or Proceeding.**

Dated: July 13, 2001

  
Patricia E. Cuniff

Sworn to and subscribed before  
me this 13th day of July, 2001

  
Notary Public

My Commission Expires:

3/27/04

W. R. Grace 2002 Service List  
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